ESTATE OF JOSEPH WILLESSI

IBIA 80-20 Decided May 28, 1981

Appeal from order by Administrative Law Judge Robert C. Snashall approving will and ordering distribution.

Reversed.

1. Indian Probate: Indian Reorganization Act of June 18, 1934: Construction of Section 4--Indian Probate: Wills: Construction of

Jurisdiction of Indian tribe over Quinault Reservation where estate trust property was located being material to a decision concerning the eligibility of a devisee to take property under an Indian will, it was error to hold that the General Allotment Act conferred jurisdiction over the reservation upon the tribes of persons allotted on the reservation without regard to the historical development of the reservation and the actual implementation of the treaty rights of the tribes concerned. The record demonstrates that since acceptance of the Indian Reorganization Act of 1934 (IRA) the Quinault Tribe exercised exclusive jurisdiction over the Quinault Reservation, and that the Quileute Tribe (one of the tribes whose hereditary members accepted Quinault

allotments) had earlier elected to forego any treaty rights it may have claimed in the Quinault Reservation in order to retain its ancestral village at LaPush. The record establishes jurisdiction over the Quinault Reservation to be in the Quinault Tribe, an IRA tribe.

2. Indian Probate: Indian Reorganization Act of June 18, 1934: Construction of Section 4--Indian Probate: Wills: Construction of

Sec. 4 of the Indian Reorganization Act of 1934 prior to amendment in 1980 did not permit devises of trust property found on reservations subject to the Act to persons who were neither heirs of the decedent allottee nor members of the tribe having jurisdiction over the reservation where the trust land is located. Thus, since appellee was neither a member of the Quinault tribe nor an heir of decedent, he was barred from taking trust property on the Quinault Reservation under the decedent's will.

APPEARANCES: Frederick L. Noland, Esq., for appellants Esther Elvrum, Irene Soeneke, Phillip C. Hanson, Philip S. Talbot, Alice Manes, Pearl Cousens, Dorothy Murray, Ira Talbot, Jacqueline Jauhola, Dorothy Nelson, Edward Verney, Patrick Verney, Bertha Bousley, Audrey Beaston, Delmar Gagnon, Ruby McCovey, Gwendolyn Sanchez, Donna Grosz, Marlene Thweatt, Clarence Colby, Robin Halstead, Charles Talbot, Charles Williams, Estate of Patrick Wilkie, Jr., Estate of Edward (Edison) Talbot, Estate of Bruce Wilkie; Jon Marvin Jonsson, Esq., for appellee Leo Williams; Carl V. Ullman, Esq., for Intervenor Quinault Indian Nation; Robert S. Thompson, Esq., on behalf of the Solicitor of the Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

On September 21, 1970, decedent Joseph Willessi died testate at Forks, Washington, at the age of 77 years. At his death decedent was a member of the Quileute Indian Tribe holding allotment No. 1432 of trust lands on the Quinault Reservation; was beneficial owner of a village lot on the Quileute Reservation at LaPush; and also held a partial interest in trust lands located on the Makah Reservation. Decedent's will, signed on January 12, 1968, devised his trust property on the Quinault and Makah Reservations to appellee Leo Williams, also a member of the Quileute Tribe. Decedent's will devised the LaPush property to Nellie W. Richards, decedent's cousin, who is Leo Williams' mother. The value of the estate in 1970 when probate was commenced was estimated at $151,750. During the course of probate, however, it became apparent that the true value of the trust property, of which the Quinault allotment comprises the most valuable part, is in excess of $1,100,000.

Procedural and Factual Background

On February 10, 1972, decedent's 1968 will was approved and distribution of the trust estate ordered in conformity to the terms of the will to the two named devisees, Nellie W. Richards and appellee, Leo Williams, both members of the Quileute Tribe. As a result of this order, Mrs. Richards took the property on the Quileute Reservation, while appellee received the Quinault and Makah trust lands. An appeal was taken from the February 10 order by eight of decedent's heirs at law

who appeared in the initial proceeding. On August 8, 1974, this Board ordered a rehearing of the matter. Estate of Joseph Willessi, 3 IBIA 24 (1974).

On January 6, 1977, following an evidentiary hearing on contest of the 1968 will, where evidence which exclusively concerned decedent's competence to execute a will was offered, another order issued, approving decedent's will and decreeing distribution as before to appellee and his mother. On April 5, 1978, however, the agency superintendent charged with administration of the probate orders petitioned to reopen decedent's estate alleging discovery of a mistake of law. 1/ According to the petition to reopen, both the Quinault and Makah Reservations were organized under the Act of June 18, 1934, 48 Stat. 984, 25 U.S.C. §§ 461-79 (1976) (hereafter the Indian Reorganization Act of 1934, or IRA). The petition alleges appellee is neither a member of the Quinault or Makah Tribes nor an heir of decedent (since appellee's mother, through whom he traces his relationship to decedent, survived decedent), and concludes appellee is therefore barred from receiving an interest in trust lands on either reservation by section 4, IRA (25 U.S.C. § 464 (1976)). 2/

1/ The Apr. 5 petition to reopen also notes, for the first recorded time, that the value of the estate exceeds $1,100,000.

2/ The statute provides, in pertinent part, a restriction on devises limiting them so that: "[R]estricted Indian lands * * * [may] be * * * devised to the Indian tribe in which the lands * * * are located * * * and, in all instances such lands * * * shall descend or be devised * * * to any member of such tribe * * * or any heirs of such member." (Section 4 of the IRA was amended by the Act of Sept. 26, 1980, P.L. 96-363, 94 Stat. 1207, which relaxed the restricting classification to permit devises to "lineal descendants" or "any other Indian person for whom the Secretary of the Interior determines that the United States may hold land in trust," a change not material to this decision.)

On July 19, 1978, appellants, 26 heirs at law of decedent, in response to a notice from the Indian probate Administrative Law Judge dated April 13, 1978, denominated "Notice to Show Cause" also petitioned to reopen alleging the same mistake of law as had the superintendent. On November 6, 1978, an order issued reopening the estate and ordering distribution to the heirs, citing Estate of Dewey Cleveland, 5 IBIA 72, 83 I.D. 170 (1976), as authority for the action taken reversing the previous orders of distribution. On November 14, 1968, appellants petitioned to modify the November 6 order to correct a claimed mistaken classification of heirs. On November 17, 1968, appellee, Leo Williams, appealed to this Board from the order of November 6, 1978, seeking reversal of the November 6 order and reinstatement of the prior orders which had approved the will and ordered distribution of the Quinault property to appellee.

On April 3, 1979 (following an amendatory order entered February 8, 1979), the Administrative Law Judge notified the parties that based upon "documents" which had come to his attention, he proposed to seek return of the probate of decedent's estate from this Board where appellee's appeal from the November 6 order was pending, to reverse the order decreeing distribution to the heirs.

On November 16, 1979, the Administrative Law Judge again reversed himself. Finding the Quinault Tribe lacked exclusive jurisdiction over the Quinault Reservation, he held the Quinault Reservation is a "joint jurisdictional area" where tribal jurisdiction resides "in all tribes

who have been allotted on the reservation and all 'fish-eating Indians' of the Northwest." The order directs distribution of the Quinault property according to the terms of the 1968 will to appellee, commenting as follows that the IRA is not relevant to the determination so made:

> I do not find it necessary to reach the question of the applicability of the Indian Reorganization Act of 1934 (25 U.S.C. 464), assuming its adoption by and compliance with by the Quinault Tribe since there is no indication in the inventory of this estate allotments originally allotted to Quinaults are involved. However, in passing, I merely note as dicta that since there is joint jurisdiction over the total reservation by the various and sundry tribes included within the provision "fish-eating Indians of the Pacific Northwest", any adoption of the Indian Reorganization Act by the Quinaults would appear to only affect their interest as it appears on the reservation and could not affect in toto the total allotments.

(Order dated Nov. 16, 1979, p. 2).

Appellants, 26 heirs of decedent, now seek review of the order decreeing distribution of the Quinault property to appellee. 3/ On August 28, 1980, the Quinault Indian Nation was permitted to intervene to brief the finding below that tribal sovereignty over the reservation was not exclusively vested in the Quinault Tribe. At the invitation of the Board, the Solicitor of the Department filed a brief on behalf of the Department of the Interior addressing the jurisdictional issues raised by the November 16, 1979, order of distribution. 4/ Appellee has

3/ The Nov. 16, 1979, order correctly found appellee to be ineligible to inherit property on the Makah Reservation, since, presumably, he is ineligible as a non-Makah to inherit, not being an heir of decedent, on a reservation which is organized under IRA. The only issue on appeal concerns the finding below that Quinault property could pass to appellee.

4/ See 43 CFR 4.3(c) (1980); 46 FR 7334, 7336 (Jan. 23, 1981).

objected that the matter is not properly before the Board for decision for the reason Departmental regulations bar reopening under the circumstances of this case. The contention that the reopening was irregular is found to be without merit; the matter is properly before this Board for final decision. 5/

Oral Argument Denied

Appellee has requested oral argument before the Board. Appellants, the Quinault Tribe, and the Solicitor's Office oppose the request for the stated reason the expense of an oral presentation is not justified by the circumstances of the case on appeal, which they contend is fully and adequately presented by written briefs filed by all the

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5/ The regulation in effect at the time reopening was sought and ordered, 43 CFR 4.242, permits petition for reopening within 3 years from date of a final decision or after a longer period of time upon showing that "manifest injustice" will result as a consequence of claimed error. Reopening was sought well within that time. Appellee also argues that principles of estoppel and res judicata bar this appeal, and that due process considerations of constitutional magnitude would be involved in an order setting aside the devise in this case. With respect to estoppel, appellee contends that since the agency drew decedent's will, it was improper to permit the superintendent to complain about the effect of agency action. This argument has been rejected in past Indian probates; the Government is not bound by acts of its agents which are contrary to law. Estate of Lucinda Shelton Joe, 5 IBIA 20 (1976). Similarly, res judicata is not a bar here, for the parties and the issues on reopening are not the same as they were at the outset of this proceeding. In the initial hearing and at the 1976 rehearing, the competence of decedent was challenged by eight of his heirs at law: on reopening, the eligibility of appellee to take as a devisee under the will is disputed by 26 heirs (the original eight are, it is true, included as parties). Appellee also urges that section 4 of the IRA (prior to amendment) was unconstitutional if construed so as to defeat his claim. Although such an argument cannot be effectively addressed by the Board (Estate of William Konoa Jackson, 6 IBIA 52 (1977)), it is noted that statutes more restrictive of individual claims than is (or was) section 4 of IRA have withstood attacks upon constitutional theories of infirmity similar to those here offered by appellee, Simmons v. Eagle Seelatsee, 244 F. Supp. 808 (E.D. Wash. 1965), aff'd, 384 U.S. 209 (1966).

appearing parties. The record on appeal indicates the matter has been fully and ably presented by the parties' briefs and does not require further argument. The record sufficiently presents the matter so as to permit decision. Accordingly, oral argument is denied.

Preliminary Findings

Though much of the record on appeal is a transcript of evidence gathered at the 1976 rehearing concerning decedent's competence to make a will in 1968, his competence as a testator is no longer an issue. The relevant facts on appeal are confined to matters concerning the tribal affiliation of appellee and the status of the reservations where the trust property held by decedent is located. It is undisputed that decedent, a Quileute, was allotted land on the Quinault Reservation, and that he devised trust property on the Quinault Reservation to appellee, who is not a member of the Quinault Tribe. Also, since appellee's mother survived decedent, appellee is not, under the law of the State of Washington, an heir at law of decedent since he could not inherit from decedent under the State scheme for intestate succession while his mother lived. The Quinault Tribe voted to organize pursuant to provisions of the IRA on April 13, 1935, as did the Makah and Quileute Tribes. 6/ The Quileute Tribe adopted a constitution which was approved by the Secretary on November 11, 1936, providing

6/ Appellee suggests these political acts by the tribes may not have been sufficiently proved by appellants. However, the status of the various tribes is a matter of which the Department takes official notice, 44 FR 7235 (Feb. 6, 1979). See Pamphlet, Haas, Ten Years of Tribal Government Under I.R.A. (U.S. Indian Service 1947).

that Quileute tribal jurisdiction is limited to the tribal reservation. 7/

Historical Background

The history of the Quinault Reservation is set out by a recent Board decision construing sections 5 and 19 of the IRA: 8/

> By the Treaty of Olympia, the Quinault and Quileute Tribes ceded to the United States almost all of the lands they claimed. A provision of that treaty allowed the United States to later remove these tribes from their original reservation or reservations and consolidate them with "other friendly tribes or bands." In 1873 President Grant signed an Executive order setting the boundaries of the present Quinault Reservation for the benefit of the Quinault, Quileute, Hoh, Quit, and "other tribes of fish-eating Indians on the Pacific coast."
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> Following passage of the General Allotment Act, allotments were made to individual Indians on the Quinault Reservation. In 1911 Congress directed the Secretary of the Interior to make allotments on the Quinault Reservation to "all members of the Hoh, Quileute, Ozette, and other tribes of Indians in Washington who are affiliated with the Quinaielt [a.k.a. Quinault] and Quileute Tribes * * * and who may elect to take allotments on the Quinaielt Reservation rather than on the reservations set aside for these tribes." Act of Mar. 4, 1911, 36 Stat. 1345.
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> Following the 1911 Allotment Act, several court decisions were rendered interpreting the law. In United States v. Payne, 264 U.S. 446 (1924), the Court disapproved of the refusal by the Bureau of Indian Affairs to make allotments of timberland, after the available grazing and agriculture land on the reservation had been allotted. In 1931 the Supreme Court held as too restrictive the Secretary's interpretation concerning which Indians were entitled to an allotment under the 1911 Act. Halbert v. United States,

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7/ Article I, Constitution and Bylaws of the Quileute Tribe of the Quileute Reservation (1936), as amended.

8/ Brown v. Commissioner of Indian Affairs, 8 IBIA 183, 193-94, 87 I.D. 507, 512-13 (1980).

> 283 U.S. 753 (1931). The Court there found that the Chehalis, Chinook, and Cowlitz Tribes were among those referred to by Congress in the Act as affiliated with the Quinault and Quileute Tribes. Further, the Court held that personal residence on the Quinault Reservation was not required to obtain an allotment.
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> After the Halbert decision the Department resumed the allotment process on the Quinault Reservation. With passage of the Indian Reorganization Act in 1934 the allotment of Indian reservation land in severalty to any Indian was ended. [Citations and footnotes omitted.]

In 1922 the Quinault tribe adopted bylaws which provided that membership in the tribe should be limited to Quinault or Queets persons of at least one-quarter blood. Hereditary members of other tribes, including the Quileute, could become "affiliated members" if they resided on the reservation. This limitation upon tribal membership was later liberalized to permit "affiliated" members to enroll as members of the tribe. 9/

It is apparent that official and legislative references to the “affiliation” of the Quileute and Quinault Tribes describe the affiliation of those tribes contemplated by the 1855 treaty. The history of the two tribes demonstrates, however, that their “affiliation” failed to occur in fact. It appears the Quileute Tribe refused to remove to the territory designated by the 1873 Executive Order establishing the Quinault Reservation and insisted upon retaining the

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9/ Article II of the Constitution of the Quinault Indian Nation (1975) permits persons of Queets, Quileute, Hoh, Chinook, Chehalis, or Cowlitz descent to be admitted to tribal membership. Although the Quinault Tribe did not adopt a formal constitution immediately upon acceptance of the IRA in 1935, nothing in the Act requires such action. See 25 U.S.C. § 476 (1976) (sec. 16, IRA).

traditional Quileute tribal village and fishing area at LaPush. The position of the Quileute Tribe is described in the court's opinion in United States v. Moore, 62 F. Supp. 660, 668-669 (W.D. Wash. 1945), aff'd, 157 F.2d 760 (9th Cir. 1946):

> An abortive effort was made to establish [the Quileute Tribe] on the Quinaielt Reservation, which was created by presidential proclamation by president U. S. Grant. They declined to accept this as a reservation, even though some of them did take allotments on the Quinaielt Reservation. Their reason for not accepting the government's offer to go upon the Quinaielt Reservation was that the Quinaielts and Quillehutes for hundreds of years had been enemies, and the Quinaielts did not welcome them. An effort was then made to remove them from their village at the mouth of the Quillehute River to the Makah Indian Reservation, some forty miles to the north, and this again they refused, for the reason that their interpretation of the treaty was that they were to be given a reservation where they had always lived at the mouth of the Quillehute River.
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> * * * We must presume that President Cleveland, in promulgating the order creating the [Quileute] reservation, did so with an intent to carry out the provisions of the [1855] treaty [of Olympia]. This is more conclusively established when we note that the proclamation itself was drafted by the Indian Service, who, for thirty-five years, had been endeavoring to secure for this tribe of Indians a reservation "sufficient for their wants," and who, as evidenced by the numerous documents in this record, repeatedly called to the attention of the Commissioner of Indian Affairs and the Secretary of the Interior that these Indians were "fish eating Indians" and their sole means of subsistence depended upon a continued use of the waters from which they caught their fish.

Discussion and Decision

[1] The Administrative Law Judge's November 16 order assumes as the legal basis for his decision that the allotment on the Quinault

Reservation to individual Indians conferred jurisdiction over the reservation upon the tribes in which the allottees were members or to which they had hereditary affiliations. This thesis of allotment as a jurisdictional act, buttressed by an old probate opinion, Estate of Mary Sailto, Probate 41969-39, 10/ becomes the legal foundation for his later approval of the devise of Quinault trust property to an individual who is neither an heir of the decedent allottee nor a member of the Quinault Tribe. While the approach taken permits avoidance of consideration of section 4 of the IRA, it is not permissible, under the circumstances of this case, to avoid analysis of the effect of section 4 upon the will in probate.

The General Allotment Act, the Act of February 8, 1887, 24 Stat. 388, was envisioned as a means to assimilate the Indian into the general American society. Contrary to the assumption in the order under review, the allotment to individuals was done in derogation of tribal sovereignty, and was intended to dismantle tribal government rather than to extend it. Hopkins v. United States, 414 F.2d 464, 467 (9th Cir. 1969). The antithesis to the Allotment Acts is the Indian Reorganization Act of 1934 which ends the allotment process and seeks to revitalize and strengthen tribal self-government. 11/ The allotment of the Quinault Reservation which began in 1887 and continued under the 1911 Allotment

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10/ Two other decisions are cited: Estate of Tommy Brown, Probate 8859-35 and Estate of Mary Wheeler, Probate 6679-35. Neither of these cases, however, has any applicability to this matter since they involve the probate of estates not affected by the IRA.

11/ Fisher v. District Court, 424 U.S. 382, 387 (1976); and see Cohen, Handbook of Federal Indian Law (1941), pp. 84-87.

Act, was ended in 1935 when allotments to individuals were prohibited by section 1 of the IRA. The jurisdictional basis for the exercise of tribal sovereignty over the reservation is properly traced, thus, not to the allotment acts, but rather through the treaty rights conferred by the 1855 treaty and the executive orders establishing the Quinault and Quileute Reservations to the action taken by the Quinault Tribe to organize under the IRA.

In Halbert v. United States, 283 U.S. 753 (1931), the Court determined that allotment on the Quinault Reservation could, under the 1855 treaty, properly be made to tribes affiliated with the Quinault and Quileute Tribes without regard to individual residence. It was not suggested by the Court, however, that allotment might confer jurisdiction over the Quinault Reservation upon the tribes of allotted individuals. That argument was expressly rejected by the Court of Appeals in Moore v. United States, supra at 157 F.2d 764.

> Appellants contend that because in 1910, over 20 years after the reservation was made, certain members of the Quillayute Tribe received allotments of land in another reservation, the Quinaielt, we must assume that the President in 1889 did not intend to reserve the tide lands and river waters in the 500 acres occupied by the two hundred persons of the Quillayute Tribe. The Quinaielt reservation was made to include the Quillayute Indians, but it was created in 1873. The 1855 treaty with the Quillayutes provided that tribe "agree to remove to and settle upon the same within one year after the ratification of this treaty, or sooner if the means are furnished them." At this later date, 18 years after the time for removal, the Quillayutes declined to move away from their ancestral home and immemorially established maritime industries on the Quillayute River. The government acquiesced and they remained in La Push. We are unable to see any relevance of the 1910 allotments in determining the intent of the President in the reservation of 1889. [Footnote omitted.]

The Administrative Law Judge compounded his error when he relied upon an obscure 1939 Departmental opinion, the Estate of Mary Sailto, Probate 41969-39, which he quotes in his order of November 16 to find: "No single or particular tribe or band of Indians can be said to have exclusive jurisdiction over the Quinault Reservation. Such jurisdiction as does exist appears to be a concurrent one vested in the tribes or bands of Indians whose members have been allotted on said reservation." Both quoted conclusions stated are incorrect. Immediately after the creation of the Quinault Reservation, while the Quileute Tribe might have sought to relocate with the Quinaults, a joint jurisdiction over the reservation may have been possible. In fact it never occurred. The second suggestion that tribal organization is limited by hereditary affiliations is simply wrong.

Under the circumstances of this case, the Sailto decision, relied upon by the Administrative Law Judge does not support his conclusion. First, it is clear that the Quileute Tribe has not asserted jurisdiction over the Quinault Reservation, but elected to keep the tribal land at LaPush instead of accepting an affiliated status with the Quinault Tribe. Sailto notes this fact. Second, it is also historically clear that the Quinault Tribe has, since adoption of the IRA, continuously exerted claim to exclusive jurisdiction over the Quinault Reservation. 12/ Sailto considers the historical record of the tribal

12/ Congress recognized the Quinault Tribe to be the proper party plaintiff to represent all Indian claims arising in the Quinault Reservation by the Act of July 24, 1947, 61 Stat. 416. See also Act of Aug. 25, 1959, 73 Stat. 427. The Secretary of the Interior, by communication to Congress dated May 22, 1947, described the status and composition of the tribe as "[c]ollectively the Indians having an interest

organizations involved, finds the Quileute Tribe is limited to its own reservation at LaPush, but misconstrues Solicitor's Opinion, M-27796 (Nov. 7, 1934) to permit a finding that the Quileute devisee may take Quinault property, based in part upon a determination that the Quinault Tribe is not a single tribe having political powers but a mere collection of hereditary groups. The opinion is internally inconsistent, fragmentary, and poorly reasoned. It fails to recognize that the Quinault Tribe is a unitary political body although it is composed of members who have hereditary connections with other tribes. Sailto represents an anomaly in Departmental decisionmaking in this area, and has not been followed. It has no value as precedent. 13/ Analysis of section 4 of the IRA is required in order to decide this appeal.

[2] Section 4 of the IRA, prior to its amendment in 1980, restricted the alienation of Indian trust lands to three classes of devisees: The tribe upon whose reservation the lands are located; members of the tribe; and legal heirs of the testator. The restriction does not apply to reservations which did not adopt the IRA, nor does it apply to lands outside Indian reservations. Trust lands unrestricted by the IRA may be devised to anyone named by the testator, subject only to Departmental approval. Under section 4 of the Act, a devisee

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fn. 12 (continued)
in that reservation, including those of the blood of other tribes consolidated with the Quinaielts pursuant to the treaty, Executive order, and act of Congress [who] may be regarded as one tribe," a position consistent with prior Departmental statements concerning the issue (see Op. Sol. M-27796 cited in n.13).

13/ Solicitor's Opinion, M-27796 (Nov. 7, 1934), I Op. Sol. on Indian Affairs 478 (1979), was apparently the basis for the "concurrent" jurisdiction language appearing in Sailto. The conclusion stated is, however, an erroneous application of the Solicitor's opinion.

of trust property who is not a member of the tribe on whose reservation the land is located may take by devise from an Indian will only if the devisee is a legal heir of the testator who would inherit according to the inheritance scheme of the applicable state probate code. 14/ Since this restriction on the class of devisee is well established, the only possible avoidance of the limitation upon a nonmember devisee is through a finding that the trust land is not located on an IRA reservation or, as was done below in this case, through a finding that the devisee's tribe has jurisdiction over the reservation where the trust land is located. 15/

The record establishes that appellee, neither a member of the Quinault Tribe nor an heir of decedent, is ineligible under section 4 of the IRA, to take trust property devised to him which is located on the Quinault Reservation, since that reservation is under the jurisdiction of the Quinault Tribe which adopted IRA organization in 1935. The order appealed from must be reversed.

14/ Since Solicitor's Opinion, M-27776, 54 I.D. 584 (Aug. 17, 1934), the Department has consistently followed the stated principles in construing section 4 of the IRA. Estate of Cleveland Iron Shooter, 7 IBIA 212 (1979), on appeal as Ramirez v. Andrus, CA 79-L-79 (D.C. Neb.); Estate of Dewey Cleveland, 7 IBIA 72, 83 I.D. 170 (1976); Estate of Rose LaRose, 2 IBIA 60, 80 I.D. 620 (1973); Estate of Emma Blowsnake Goodbear Mike, IA-916 (Oct. 26, 1960). Contrary to the assertions of appellee, the meaning of the word "heirs" as used in section 4 is not ambiguous. As the Aug. 1934 Solicitor's opinion observes (54 I.D. 586-587), "It requires no strained construction of language to interpret the phrase 'or any heirs of such member' * * *. * * * the phrase * * * should properly be construed to mean 'heirs of the testator.'"

15/ Solicitor's Opinion, M-27796, n.12, supra, discusses several possible jurisdictional situations. The Quinault Tribe's situation is described at I Op. Sol. 479: "(c) A group of Indians residing on a single reservation, who may be recognized as a 'tribe' for purposes of the Wheeler-Howard Act regardless of former affiliations."

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the order dated November 16, 1979, approving the devise of trust property to appellee of Quinault trust lands is set aside. The Administrative Law Judge is directed to prepare an order of distribution of the Quinault trust property to decedent's heirs at law.

This decision is final for the Department.

Franklin D. Arness
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge